

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
vs.)	
Illinois Bell Telephone Company,)	
Verizon North, Inc. and Verizon South, Inc.)	Docket No. 06-0562
)	
Investigation into the applicability of)	
Section 2-202 of the Public Utilities Act)	
To intrastate coin drop pay telephone)	
Revenues)	

VERIZON’S VERIFIED INITIAL COMMENTS

Verizon North Inc. and Verizon South Inc. (collectively, “Verizon”), through their attorneys and pursuant to the scheduled adopted by the Administrative Law Judge at the August 30, 2006 Status Hearing, hereby submit their Verified Initial Comments in the above referenced proceeding.

Introduction

Commission Staff has taken the untenable position that Verizon must pay Public Utility Fund (“PUF”) taxes on revenues from intrastate coin drop rates for pay telephone services that it provides in Illinois, even though those rates are unregulated and not subject to the PUF tax. Moreover, the Commission investigation is financially unjustified. The additional tax sought from Verizon is negligible – less than \$700 each year for 2005 and 2006, and less than \$20,000 in the aggregate for the past eight years. The Commission should close this proceeding immediately by a conclusive finding that PUF taxes are not appropriately collected on such revenues.

Discussion

I. Factual Background

On November 8, 2004, Bill Baima of the Commission's Financial Information Section sent a letter ("Baima Letter") to Verizon¹ asserting that "[p]ayphone and collocation revenues are taxable and should also be tariffed." A true and correct copy of the Baima Letter is attached hereto as **Exhibit A**. The Baima Letter requested as follows:

Please complete the attached worksheet and return it to me by December 31, 2004. The worksheet requests your company's intrastate pay telephone revenues and/or collocation revenues for each of the years 1998 through 2003. Please review your company's Annual Gross Revenue Tax Returns for the years 1998 through 2003 and verify that these revenues were properly reported and included in the tax calculations on the tax returns filed for these years.

See Exhibit A.

The Baima Letter closed by directing the company to submit revised tax returns if it "did not correctly report these revenues and/or calculate the tax amount." *See Exhibit A.*

Verizon responded to the Baima Letter by advising that it "respectfully disagrees that unregulated payphone and collocation revenues ("P & C Revenues") must be included in the calculation of the ICC administration fee under 220 ILCS 5/2-202." *See* December 29, 2005 Letter from Philip J. Wood Jr. of Verizon ("Wood Letter"), a true and correct copy of which is attached hereto as **Exhibit B**. The Wood Letter noted that unregulated P & C revenues were not subject to the Commission's oversight and therefore not properly included in the calculation of the PUF tax, since unregulated payphone and collocation rates were not subject to the tariffing requirements of 220 ILCS 5/9-102. *See Exhibit B*. Verizon also noted that it had not deviated from its past PUF tax calculation practices (which the Commission had never before challenged), and that in any event, the amount at issue was minimal. *Id.*

¹ The Baima Letter was sent to Bell Atlantic Communications, Inc.

Verizon heard nothing more from the Commission until the initiation of this investigation nearly two years later, when the Commission opened this proceeding by order dated August 16, 2006 (hereinafter, “Initiating Order”). While Staff has now apparently abandoned its erroneous assertion that PUF taxes are due on collocation reviews, it persists in contending that PUF taxes are due on revenues from intrastate coin drop rates for pay telephone services provided in Illinois.

II. Pertinent Statutory Authority

The August 1, 2006 Telecommunications Division Staff Report filed in this docket (“Staff Report”) provides useful background on the PUF tax. As the Staff Report notes, the PUF tax is imposed upon the gross revenues of public utilities that are subject to the Illinois Public Utilities Act (“PUA”). Staff Report at 1; *see also* 220 ILCS 5/2-202(c). The definition of “gross revenues” is therefore critical to whether PUF taxes are due on revenues from intrastate coin drop rates for pay telephone services provided in Illinois. As recognized by the Staff Report, “gross revenue” “includes all revenue which is (1) collected by a public utility subject to regulation under [the PUA] (a) pursuant to the rates, other charges, and classifications which it is required to file under Section 9-102 of [the PUA] and (b) pursuant to emergency rates as permitted by Section 9-104 of [the PUA], and (2) is derived from the intrastate public utility business of such a utility.” Staff Report at 1; *see also* 220 ILCS 5/3-121.

Section 9-102 of the PUA requires public utilities to file schedules of rates and classifications, and gives the Commission ultimate authority to approve rates different than those filed by providers, which reinforces the Commission’s authority over regulated rates. *See* 220 ILCS 5/9-102. However, Section 9-102 only applies to regulated services. *See Cerro Copper*

Products v. Illinois Commerce Commission, 83 Ill. 2d 364, 415 N.E. 2d 345 (1980) (noting that fundamental purpose of providing a rate schedule is rate regulation). “Intrastate public utility business” is defined as including “all that portion of the business of the public utilities designated in Section 3-105 of [the PUA] *and over which this Commission has jurisdiction under the provisions of [the PUA].*” 220 ILCS 5/3-120 (emphasis added).

Since revenue from intrastate coin drop rates for pay telephone services provided in Illinois is plainly not collected “pursuant to emergency rates as permitted by Section 9-104 of [the PUA],” it can only be subject to the PUF tax if it is *both* under the Commission’s jurisdiction *and* collected “pursuant to the rates, other charges, and classifications which [the public utility] is required to file under Section 9-102 of the [PUA].” This section of the PUA deals only with regulated rates. *See Cerro Copper, supra*. As discussed below, because revenues from intrastate coin drop rates for pay telephone services provided in Illinois do not meet either of the mandatory criteria, they are not subject to the PUF tax.

III. Deregulation of Intrastate Coin Drop Rates for Pay Telephone Services

The Staff Report acknowledges the 1997 deregulation of pay telephone customer premises equipment (“CPE”) and rates for local payphone service. Staff Memo at 2; *see also* First Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-388 (rel. September 20, 1996) at ¶¶ 51-61 (“Payphone Order”); and Order on Reconsideration, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.*, FCC 96-439/CC Docket Nos. 91-35/96-128 (rel. November 8, 1996) at ¶ 143-147 (“Payphone Reconsideration Order”). Certain parties appealed

the FCC's decision to deregulate local payphone rates, and the D.C. Circuit unequivocally affirmed, finding that the FCC "has been given an express mandate to preempt State regulation of local coin calls." *See Illinois Public Telecommunications Ass'n v. FCC*, 117 F.3d 555, 563 (D.C. Cir. 1997). There is no question that intrastate coin drop rates for pay telephone services that Verizon provides in Illinois are deregulated and not under Commission jurisdiction.

IV. Impact of Deregulation on Tariffing Requirements

As a result of the FCC's deregulation of local payphone service rates, this Commission is not permitted to regulate intrastate coin drop rates for pay telephone services provided in Illinois, nor may it require them to be tariffed. The Staff Memo concedes that the FCC has preempted state regulation of local coin call rates, but asserts (without citation to any authority), that states are still permitted to mandate the tariffing of such rates. While Verizon disagrees with this premise, and *Cerro Copper* and similar cases are contrary to Staff's position, that disagreement is ultimately irrelevant because the Commission has not asserted or held that tariffing of intrastate coin drop rates for pay telephone services provided in Illinois is required under 220 ILCS 5/9-102. Rather, the Commission has consistently cited 220 ILCS 5/13-501 as the basis for requiring payphone providers to tariff their services.

This is the position that Staff took during the ICC workshops that followed the issuance of the FCC's *Payphone Order* and *Payphone Reconsideration Order*. Citing 220 ILCS 5/13-501, Staff asserted that end user payphone rates should be declared competitive, and therefore moved from local exchange carriers' non-competitive tariffs into their competitive tariffs (as defined in 220 ILCS 5/13-502). Verizon disagreed, but decided to undertake such tariffing on a voluntary basis. Following the workshops, the Commission issued an order directing payphone

providers to detariff their payphone CPE offerings as a result of the FCC's newly-issued payphone orders, again citing 220 ILCS 5/13-501 as the origin of the tariffing requirement. *See Order, Illinois Commerce Commission on Its Own Motion v. Illinois Bell Tel. Co. et al.*, ICC Docket 97-0630, 1997 Ill. LEXIS 856, *2 (December 3, 1997).

Staff asserts that state tariffing requirements applied to intrastate coin drop rates for pay telephone services provided in Illinois are not preempted by 47 U.S.C. § 276 because the associated FCC rules preempt only regulations that impose market entry or exit requirements. Staff Memo at 3. However, this position is unlawful. Requiring the filing of a tariff affects both market entry and exit because a provider must tariff a service before offering it, and must seek approval to withdraw a tariff in the event of market exit. Staff claims that *Cellular Telecommunications Industry Ass'n v. Federal Communications Comm'n*, 168 F.3d 1332 (D.C. Cir. 1999) supports its position that a state tariffing requirement is not a barrier to entry, but Staff's position is incorrect. The D.C. Circuit found only that a mandate to make USF contributions did not constitute impermissible rate regulation of wireless service simply by virtue of increasing the cost of doing business in the state. *See Cellular Telecommunications*, 168 F.3d at 1336. It did not disagree that state tariffing requirements were a barrier to entry,

However, ultimately it is unnecessary for Commission to reach the issue of whether it is preempted from ordering payphone providers to tariff intrastate coin drop rates for pay telephone services provided in Illinois, because to the extent the Commission has done this, it has done so under 220 ILCS 5/13-501 and not under 220 ILCS 5/9-102. As explained above, revenues from services tariffed pursuant to 220 ILCS 5/13-501 are not subject to the PUF tax. Thus, regardless of whether Staff is correct that providers must tariff intrastate coin drop rates for pay telephone

services provided in Illinois under this statute, pursuant to 220 ILCS 5/2-202(c) and 220 ILCS 5/3-121, revenues therefrom are not subject to the PUF tax.

Conclusion

Staff appears to be seeking a way to stretch the law in order to generate a new source of PUF tax revenue (perhaps to offset the “unusually large” PUF tax refund that AT&T has previously advised the Commission is due and owing for the 2001 tax year; *see* Staff Memo at 2). Not only is the amount Staff claims to be due from Verizon extremely small, Staff’s basis for asserting that intrastate coin drop rates for pay telephone services provided in Illinois are subject to the PUF tax is legally flawed. Because the FCC has deregulated those rates, and because the Commission has only ever contended that they be tariffed as competitive services under 220 ILCS 5/13-501 (but not under 220 ILCS 5/9-102), there is no legal basis for Staff’s contention that Verizon must pay PUF tax on such revenues. For all the reasons discussed herein, the Commission should close this investigation with a conclusive finding that PUF taxes are not appropriately collected on such revenues.

Dated: October 17, 2006

Verizon North Inc. and Verizon South Inc.

By: 
Deborah Kuhn

Assistant General Counsel
Verizon Great Lakes Region
Verizon
205 North Michigan Avenue, 11th Floor
Chicago, Illinois 60601
(312) 260-3326 (telephone)
(312) 470-5571 (facsimile)
deborah.kuhn@verizon.com

and

A. Randall Vogelzang
General Counsel
Verizon Great Lakes Region
Verizon
HQE02J27
600 Hidden Ridge
Irving, TX 75038
(972) 718-2170 (telephone)
(972) 718 0936 (facsimile)
randy.vogelzang@verizon.com

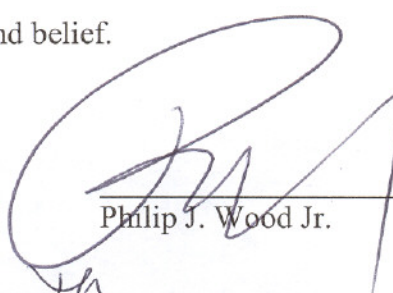
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
vs.)	
Illinois Bell Telephone Company,)	
Verizon North, Inc. and Verizon South, Inc.)	Docket No. 06-0562
)	
Investigation into the applicability of)	
Section 2-202 of the Public Utilities Act)	
To intrastate coin drop pay telephone)	
Revenues)	

STATE OF ILLINOIS)
)
COUNTY OF McLEAN)

VERIFICATION

Philip J. Wood Jr., being duly sworn, states on oath that he is Verizon's Vice President of Public Affairs, Policy & Communications for Illinois, and that the factual statements made in the foregoing "Verizon's Verified Initial Comments" regarding the true and correct nature of the copies of the correspondence attached as Exhibits A and B thereto are complete and accurate to the best of his knowledge, information and belief.



Philip J. Wood Jr.

Subscribed and sworn to before me this 13th day of October, 2006.






**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
vs.)	
Illinois Bell Telephone Company,)	
Verizon North, Inc. and Verizon South, Inc.)	Docket No. 06-0562
)	
Investigation into the applicability of)	
Section 2-202 of the Public Utilities Act)	
To intrastate coin drop pay telephone)	
Revenues)	

STATE OF ILLINOIS)
)
COUNTY OF McLEAN)

VERIFICATION

Karen Boswell, being duly sworn, states on oath that she is Verizon's Manager – Public Affairs, Policy and Communications for Illinois, and that the factual statements made in the foregoing "Verizon's Verified Initial Comments" regarding the ICC workshops that followed the issuance of the FCC's *Payphone Order* and *Payphone Reconsideration Order* are complete and accurate to the best of her knowledge, information and belief.



Karen Boswell

Subscribed and sworn to before me this 13th day of October, 2006.



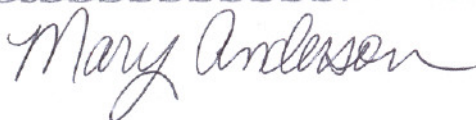


EXHIBIT A

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION

Dawn Johnson

*Per James Crain,
this should go to
you*

Sue Dittus

11/16/04

November 8, 2004

Bell Atlantic Communications, Inc.
John D. Broten, President
1320 N Court House Rd 9th Flr
Arlington VA 22201

541762657

Dear Sir or Madam:

~~A review of Annual Gross Revenue Tax Returns filed with the Illinois Commerce Commission~~
has indicated that certain telecommunications carriers may not be reporting payphone and/or
incorrectly deducting collocation revenues from the calculation of the tax.

Payphone and collocation revenues are taxable and should also be tarified. Please complete the
attached worksheet and return it to me by December 31, 2004. The worksheet requests your
company's intrastate pay telephone revenues and/or collocation revenues for each of the years
1998 through 2003.

Please review your company's Annual Gross Revenue Tax Returns for the years 1998 through
2003 and verify that these revenues were properly reported and included in the tax calculations
on the tax returns filed for these years. Complete your company's certification by checking the
appropriate box on the back of the worksheet.

If your company did not correctly report these revenues and/or calculate the tax amount, please
submit Revised Amended Gross Revenue Tax Returns along with your remittance for the
additional taxes due by December 31, 2004. Tax Returns are available on our website:
www.icc.state.il.us.

Penalties and interest on the Revised Amended Gross Revenue Tax Returns will be waived if
~~received by December 31, 2004. A return envelope is enclosed for your convenience.~~

If you have any questions, please contact me at (217) 785-1015. If I am not available you may
also contact Janet Hulet at (217) 782-4086.

Sincerely,

Bill Baima

Bill Baima
Financial Information Section
bbaima@icc.state.il.us

Complete this form by December 31, 2004, and send to:

**Illinois Commerce Commission
 Financial Information Section
 527 East Capitol Avenue
 Springfield IL 62701**

**Bell Atlantic Communications, Inc.
 John D. Broten, President
 541762657**

Pay Telephone Revenues

For the years 1998 through 2003, complete the following table by inserting the intrastate pay telephone revenues for each of these years. Then, for each year, indicate if Public Utility Fund taxes were paid on these intrastate pay telephone revenues.

Year	Intrastate Pay Telephone Revenues	
	Amount	PUF Taxes Paid on Amount of Revenues (Yes/No)
1998		
1999		
2000		
2001		
2002		
2003		

Collocation Revenues

For the years 1998 through 2003, complete the following table by inserting the collocation revenues resulting from tariff and the collocation revenues resulting from contracts for each of these years. Then, for each year, indicate if Public Utility Fund taxes were paid on these amounts of collocation revenues.

Year	Collocation Revenues-Tariffs		Collocation Revenues-Contracts	
	Amount	PUF Taxes Paid on Amount of Revenues (Yes/No)	Amount	PUF Taxes Paid on Amount of Revenues (Yes/No)
1998				
1999				
2000				
2001				
2002				
2003				

- ☐ I certify that this company's Annual Gross Revenue Returns for the years 1998 through 2003 have been correctly filed in accordance with the above determination that intrastate pay telephone revenues and collocation revenues are taxable. Attached are your requested worksheets of pay telephone and collocation revenues that are true and correct.
- ☐ I certify this company's Annual Gross Revenue Tax Returns for the years 1998 through 2003 have not been correctly filed in accordance with the above determination that intrastate pay telephone revenues and collocation revenues are taxable. Revised Amended Gross Revenue Tax Returns are attached. Attached are your requested worksheets of pay telephone and collocation revenues that are true and correct.

Prepared By: _____

Name and Title: _____

Officer's Signature _____

Officer Name and Title: _____

Date: _____

EXHIBIT B

Philip J. Wood Jr.
Assistant Vice President-
Public Policy & External Affairs



December 29, 2004

1312 East Empire Street
ILLLARA
Bloomington, IL 61701
Tel: 309 663-3124
Fax: 309 663-3186
Philip.j.wood.jr@verizon.com

Mr. Bill Baima (bbaima@icc.state.il.us)
Financial Information Section
State of Illinois
Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

Dear Mr. Baima,

This letter is in response to your November 8, 2004 letter sent to John Broten in Arlington, VA. You state that "Payphone and Collocation revenues are taxable and should also be tarified" and request that carriers submit a worksheet that identifies intrastate payphone revenues and/or collocation revenues for each of the years 1998 through 2003.

Verizon respectfully disagrees that unregulated payphone and collocation revenues ("P & C Revenues") must be included in the calculation of the ICC administration fee under 220 ILCS 5/2-202. P & C revenues are not subject to the Commission's oversight and the Act does not require them to be included. For example, Section 5/3-121 of the Act defines "gross revenues" under Section 5/2-202 to include rates that are required to be filed under Section 9-102. Even though payphone and collocation rates can be filed with the Commission, such a filing would not be made under Section 9-102 because there is no requirement that they be filed under that statute.

In addition, we have been following the current calculation of the tax for a number of years without objection, and we believe that if there is any question at this late date we should look to the practice we have followed over the years as a guide.

As I stated on a conference call earlier this month with Mr. John Hester, the Illinois Commerce Commission's Director of Telecommunications, even if the revision to the calculation were proper, it would not generate any material new revenue. My estimate is that inclusion of Verizon's P & C revenues would generate less than \$30,000 for the entire period identified in your letter. I believe both of us could spend our time more effectively on other matters.

If you have any questions or would like to discuss further, please feel free to contact me instead of Mr. Broten.

Sincerely,

C: Mr. John Hester-Director Telecommunications Illinois Commerce Commission
Mr. Doug Dougherty-President Illinois Telecommunications Association

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
vs.)	
Illinois Bell Telephone Company,)	
Verizon North, Inc. and Verizon South, Inc.)	Docket No. 06-0562
)	
Investigation into the applicability of)	
Section 2-202 of the Public Utilities Act)	
To intrastate coin drop pay telephone)	
Revenues)	

NOTICE OF FILING

Please take notice that on October 17, 2006, I caused the foregoing "Verizon's Verified Initial Comments" in the above-captioned matter to be filed electronically with the Illinois Commerce Commission via its E-Docket system.



Deborah Kuhn

CERTIFICATE OF SERVICE

I, Deborah Kuhn, certify that I caused the foregoing "Verizon's Verified Initial Comments," together with a Notice of Filing, to be served upon all parties on the attached service list on this 17th day of October, 2006, by electronic mail.



Deborah Kuhn

**ILLINOIS COMMERCE COMMISSION
SERVICE LIST
DOCKET NO. 06-0562**

Eve Moran
Administrative Law Judge
Illinois Commerce Commission
160 North LaSalle Street
Suite C-800
Chicago, IL 60601
E-Mail: emoran@icc.state.il.us

A. Randall Vogelzang
General Counsel
Verizon Great Lakes Region
HQE02J27
600 Hidden Ridge
Irving, TX 75038
E-mail: randy.vogelzang@verizon.com

Karl B. Anderson
Corporate/Legal
Illinois Bell Telephone Company
225 West Randolph, Floor 25D
Chicago, IL 60606
E-Mail: ka1873@sbc.com

David O. Rudd
Gallatin River Communications, LLC
625 South Second Street
Springfield, IL 62704
E-mail: dorudd@aol.com

Deborah Kuhn
Assistant General Counsel – Verizon Great Lakes Region
Verizon
205 North Michigan Avenue
Suite 1100
Chicago, IL 60601
E-Mail: deborah.kuhn@verizon.com

Mary Pat Regan
Vice President - Regulatory
Illinois Bell Telephone Company
555 Cook St., Floor 1E
Springfield, IL 62721
E-Mail: mr1296@sbc.com

Philip J. Wood, Jr.
Vice President – Public Affairs, Policy & Communications
Verizon
1312 East Empire Street ILLLARA
P. O. Box 2955
Bloomington, IL 61720
E-Mail: philip.j.wood@verizon.com